

**Kondo et al.** (Hereinafter "**Kondo**") and claims 109-116 and 121-128 under 35 U.S.C. §103(a) as unpatentable over U.S. Patent No. 5,550,066 to **Tang et al.** (Hereinafter "**Tang**") in view of **Kondo**. Applicant traverses these rejections at least for the reasons advanced hereinbelow.

In the Office Action, the Examiner refuses to consider Applicant perfecting his claims for foreign priority, notwithstanding the filing of a *Verified English Translation* of Japanese Application Serial No. 9-092935 <sup>not in file (in file 9-092936)</sup> in the previous amendment. In so doing, the Examiner claims that the submission of the translated foreign priority document should not be construed with a claim of priority under 35 U.S.C. §119.

While Applicant understands the filing of a translated foreign priority document, *ipso facto*, does not constitute a claim for foreign priority, Applicant would like to direct the Examiners attention to the Office Action Summary dated May 23, 2001 (Paper No. 5), in which the Examiner previously acknowledges Applicant's claim for foreign priority under 35 U.S.C. §119. Accordingly, Applicant's filing of the *Verified English Translation* of Japanese Application Serial No. 9-092935 was merely for purposes of perfecting his claim for priority so as to antedate the filing date of the **Hamada** patent. Inasmuch as the effective filing date of the subject application predates the filing date of the **Hamada** patent, the **Hamada** patent is inapplicable as prior art against the claimed invention. Accordingly, Applicant respectfully requests withdrawal of the respective prior art rejections based upon the **Hamada** patent.

The claimed invention is directed to an EL display device comprising at least one thin film transistor formed over a substrate, a first insulating layer comprising organic resin formed over the thin film transistor, and a second insulating layer comprising DLC formed over the first insulating layer. In accordance with claims 113 and 125, the first insulating layer comprises silicon nitride.

Applicant respectfully contends that the claimed invention defines subject matter which is clearly patentably distinct over the prior art. More particularly, it is contended that *Tang*, either alone or in combination with *Kondo*, fails to expressly teach or implicitly suggest each and every limitation of the claimed invention as presently amended. For instance, in the rejection, the Examiner contends that *Tang* discloses an electroluminescence display comprising a thin film transistor, an insulating layer, a pixel electrode, and a light-emitting layer. The Examiner find, however, that *Tang* fails to disclose an organic based resin for the first insulating layer and a DLC material for the second insulating layer. Accordingly, *Kondo* was cited to modify *Tang* since appears to disclose that a hard carbon film such as a diamond-like carbon (DLC) film having SP<sup>3</sup> bonds can be used as an insulator layer.

Even assuming, *arguendo*, that *Kondo* in fact teaches what is contended by the Examiner, Applicant contends that the proposed combination of *Kondo* with *Tang* still fails to teach or remotely suggest the claimed invention. For instance, while it may be true that *Kondo* discloses a DLC film as an insulator layer, it appears that the DLC film of *Kondo* is formed within a MIM device that constitutes a switching device (Column 1, lines 10-11 and column 4, lines 9-10). On the other hand, the claimed invention requires that the insulating layer comprising DLC be formed over a thin film transistor, which also constitutes the switching device. In other words, the DLC film of the claimed invention is provided separate and apart from the switching device, while the DLC film of *Kondo* constitutes part of the switching device. Thus, even if the DLC film of *Kondo* is applied to the electroluminescence display of *Tang*, the claimed invention would not result since *Kondo* fails to suggest providing the DLC film separate and apart from the switching device. Accordingly, reconsideration and withdrawal of the rejection is earnestly solicited.

Moreover, it is contended that the claimed invention is further patentably distinct from the proposed **Kondo-Tang** combination since each related art reference fails to teach or remotely suggest an insulating layer comprising silicon nitride. Inasmuch as the proposed **Kondo-Tang** combination fails to teach such a feature, *prima facie* obviousness of the claimed invention cannot result. Accordingly, reconsideration and withdrawal of the rejection is earnestly solicited.

**B. Non-Statutory Double Patenting Rejection**

The Office Action rejects claims 109-132 under the judicially created doctrine of obviousness-type double patenting as unpatentable over claims 90-91 and 97 of U.S. Patent No. 6,115,090 and provisional rejects claims 109-132 under the judicially created doctrine of double patenting as unpatentable over claim 8 of copending U.S. Application Serial No. 09/295,397. Applicant traverses these rejections at least for the reasons advanced hereinbelow.

As presently defined in the pending claims, the EL display device of the claimed invention requires the combination of an insulating layer comprising DLC and a light-emitting layer formed over a third insulating layer. Applicant respectfully contends that claims 90-91 and 97 of '090 patent are deficient since they fail to teach or remotely suggest such a combination. Applicant further contends that one of ordinary skill in the art would not deem such a distinction as an obvious variant. Accordingly, obviousness-type double patenting cannot be supported in claims 90-91 and 97 of the '090 Patent. Consideration of the amendments and withdrawal of the rejection is respectfully solicited.

Regarding the provisional double patenting rejection, Applicant respectfully requests that a formal response thereto be held in abeyance at least until a notice of allowability has been indicated by the Examiner.

**Conclusion**

Accordingly, Applicant submits that the pending claims are in proper condition for allowance and consideration and withdrawal of the pending rejections is requested. If the Examiner believes further discussions with applicant's representative would be beneficial in this case, he is invited to contact the undersigned.

Respectfully submitted,



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